

**OPINION
72-290**

August 9, 1972 (OPINION)

Mr. Charles Bosch
Registrar
Motor Vehicle Department
State Office Building
Bismarck, ND

Dear Mr. Bosch:

This is in response to your letter of June 22, 1972, with regard to motor vehicle registrations where check for renewal fee is returned to your office by the bank with the notation "account closed."

You inform us that in the situation in question the motor vehicle registration was renewed for the current year and the payment for the fees was made by check. You state that subsequently the check was returned to your office by the bank with the notation "account closed." You indicate that in the interim between the issuing of the check and its return by the bank the motor vehicle was repossessed by the motor vehicle dealer.

You state that it would appear that the situation is controlled by sections 39-04-06 and 39-06-11 of the North Dakota Century Code, as amended. Your questions are stated as:

"Specifically, is this office authorized to rescind and cancel the current year registration as provided for under section 39-04-06 even though the original owner is no longer in possession of the motor vehicle?

"Secondly, if the recession is made by this office, is it authorized to require the surrender of the registration plates for the motor vehicle?"

Section 39-06-11 of the North Dakota Century Code does not appear to be applicable to the factual situation you describe, unless there are further facts you have not disclosed as to a minor being involved in the transaction, etc.

Section 39-04-06 of the 1971 Supplement to the North Dakota Century Code does provide in part that:

" * * * All motor vehicle license plates issued by the registrar, shall continue to be the property of the state of North Dakota for the period for which said plates are valid. * * * ."

Section 39-04-06 of the 1971 Supplement to the North Dakota Century Code does provide in part that:

" * * * Whenever a check is returned to the department for want of payment the department shall rescind and cancel the registration of the motor vehicle covered by such check. When payment of the registration fee is made the registration shall

be renewed."

The very clear implication of the phrase "shall continue to be the property of the state of North Dakota" in the above quoted portion of section 39-04-11 of the 1971 Supplement to the North Dakota Century Code is that the license plates are the property of the state even before becoming valid. This would also be confirmed by the procedures and methods by which the department first obtains same prior to issuance to users.

The hereinbefore quoted language of section 39-04-06 of the 1971 Supplement to the North Dakota Century Code makes it clear that the department is required to rescind and cancel the registration of the motor vehicle when the check is returned to the department for want of payment, and states no exceptions to its general provisions applicable to the situation where the "original owner" (to use your phrase) is no longer in possession of the vehicle. Thus in answer to your first question it is our opinion that your office is authorized to rescind and cancel the current year registration as provided for under section 39-04-06 even though the original owner is no longer in possession of the motor vehicle. We might state further in this regard that under the language of the statute, the department would be required to adopt such rescission on the basis of nonpayment of the check regardless of whether the vehicle was currently owned by the manufacturer, dealer, first purchaser or second or subsequent purchaser of the vehicle and without regard to which of said parties was in possession of same.

As to your second question, the statutes do not specify the action to be taken by the department with regard to the plates in the case of such rescission; however, considering the provisions of chapter 39-04 as a whole the provision as to ownership of the plates, the obvious purpose of the chapter to authorize the department to administer this part of the state's property, and the further purpose of the chapter to allow possession of the plates to be given to vehicle owners to evidence current registration and payment of fees, we feel the department would be entirely justified in demanding the surrender of the plates, and taking appropriate action to regain possession of this part of the state's property in the circumstances you describe.

We hope the within and foregoing will be sufficient for your purposes.

Yours very truly,

Helgi Johanneson

Attorney General